

PURPOSE

To protect the privacy rights of the Michigan Department of Health and Human Services (MDHHS) clients who are deceased.

REVISION HISTORY

Issued: 04/14/2003
Revised: 01/01/2016
Reviewed: 01/01/2017
Next Review: 01/01/2018

POLICY

MDHHS shall protect the Protected Health Information (PHI) of a deceased individual for fifty years following the individual's death. Mental health records of a recipient shall be protected for as long as the department maintains the records. (CFR 164.502; MCL 330.1748)

Disclosure of a deceased individual's PHI may be made to coroners, medical examiners, funeral directors, law enforcement, and organ procurement organizations. (CFR 164.512)

Disclosure will be considered for research projects through the department's Institutional Review Board. MDHHS will verify the purpose of the research prior to release of information. (CFR 164.512(i))

A decedent's personal representative may authorize release of the deceased's PHI that is relevant to such personal representation. (CFR 164.502)

The decedent's personal representative is allowed to exercise the rights of the individual to make decisions regarding the decedent's PHI. (CFR 164.502)

Disclosure of a deceased individual's PHI may be made to a family member, other relative, or close personal friend of the decedent if the person was involved in the decedent's care or payment for care prior to the decedent's death and the disclosure of PHI is relevant to such person's involvement.

Disclosure is not allowed if it would be inconsistent with a prior expressed preference of the decedent that is known to MDHHS. (CFR 164.510)

**When other applicable privacy or confidentiality laws conflict with HIPAA, comply with the law that provides the individual with greater*

privacy protection or rights. (Examples of state and federal laws are Medicaid, Substance Abuse, Public Health Code, HIV/AIDS/STDs, Mental Health Code). When in doubt, contact the Compliance Office or the Legal Affairs Administration for assistance.

PROCEDURE

General PHI Protection

Except for uses and disclosures for research purposes, the agency must protect the deceased individual's PHI in the same manner and to the same extent as required for a living person's PHI. This protection exists for fifty years after the decedent's death. Mental health records of a recipient shall be protected for as long as the department maintains the records.

Disclosure is Permitted:

- To the deceased individual's personal representative on receipt of a copy of the document granting the personal representative authority. The PHI disclosed must be relevant to the personal representative's representation. The personal representative's authority must be documented on the Beneficiary Provider Contact Tracking System or comparable facility database. The deceased individual's personal representative may also submit a HIPAA compliant authorization form in addition to the document granting the personal representative authority.
- To a health care provider without an authorization for treatment purposes of family members.
- To a family member, other relative, or close personal friend of the deceased individual who was involved in the individual's care or payment for care prior to the individual's death on receipt of a completed "Attention of Involvement In Deceased Individual's Care or Payment of Health Care - MDHHS-1430" or similar document. Disclosure is not allowed if it would be inconsistent with a prior expressed preference of the decedent that is known to MDHHS. The disclosure must be documented on the Beneficiary Provider Contact Tracking System or related facility database.
- To coroners, medical examiners, funeral directors, law enforcement personnel, when a request has been received in writing. The disclosure must be documented on the Beneficiary Provider Contact Tracking System or related facility database.

- For cadaveric organ, eye or tissue donation purposes when written documentation authorizing the release is received. The disclosure must be documented on the Beneficiary Provider Contact Tracking System or related facility database.
- For research purposes without an authorization and absent an IRB or privacy board approval when MDHHS has obtained all of the following from the researcher:
 - Representation that the use or disclosure is sought solely for research on the protected health information of decedents.
 - Documentation at the request of the MDHHS, of the death of such individuals.
 - Representation that the protected health information for which use or disclosure is sought is necessary for the research purposes.
- Under Freedom of Information Act (FOIA), and the FOIA's applicable rules for disclosure.

**When other applicable privacy or confidentiality laws conflict with HIPAA, comply with the law that provides the individual with greater privacy protection or rights. (Examples of state and federal laws are Medicaid, Substance Abuse, Public Health Code, HIV/AIDS/STDs, and Mental Health Code). When in doubt, contact the Bureau of Legal Affairs.*

REFERENCES

45 CFR §164.502, §164.510, §164.512; MCL § 330.1748.

CONTACT

For additional information concerning this policy, contact the MDHHS Compliance Office.